

TESTIMONY BEFORE THE U.S. SENATE SUBCOMMITTEE ON THE CONSTITUTION,
CIVIL RIGHTS, AND PROPERTY RIGHTS HEARING: "JUDICIAL ACTIVISM VS. DEMOCRACY:
WHAT ARE THE NATIONAL IMPLICATIONS OF THE MASSACHUSETTS GOODRIDGE DECISION
AND THE JUDICIAL INVALIDATION OF TRADITIONAL MARRIAGE LAWS?"

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The Case for a Marriage Amendment

By Maggie Gallagher

This testimony addresses three core concerns: Is marriage worth a Constitutional amendment? Is defining marriage "writing discrimination" into the Constitution? Is a federal marriage amendment necessary?

1. Is Marriage Worth It?

A critic recently raised this question in a particularly intense way by calling the proposed marriage amendment "degrading" "un-American" and "unworthy of our Constitution."

Let me with gravest respect beg to differ. Yes, marriage is the kind of issue that is worthy of our Constitution. Marriage is not a wedge issue. Concern about the impact of profound legal changes on marriage is not degrading. Of course many people find these emotional issues. But in the highest and best traditions of our democracy, we can disagree without denigrating one another. We can discuss our deepest differences with respect for each other as fellow citizens.

Yes marriage is worth it. Marriage is our most basic social institution for protecting children. It is the relationship that every known human society depends on for raising the next generation and insuring the future well-being of the society. Cross-culturally, marriage is a universal human institution and in every known society brings together men and women into a public, not private union so that the children they create have both mothers and fathers.

Does marriage matter? The social science evidence has built a consensus across partisan and ideological lines. The answer is: yes. As a recent Child Trends brief put it, "Research clearly demonstrates that family structure matters for children, and the family structure that helps the most is a family headed by two-biological parents in a low-conflict marriage. Children in single-parent families, children born to unmarried mothers, and

children in stepfamilies or cohabiting relationships face higher risks of poor outcomes. . . . There is thus value for children in promoting strong, stable marriages between biological parents."

What are these benefits of marriage? Are they special legal protections that only marital children get? No. Legal protections for children are no longer tied to marital status of parents. How then does marriage protect children? Primarily by affirming a social ideal: children have a right to know and love both their mother and their father. Marriage is the word for the way our culture, and every known culture, transmits to the next generation this ideal in ways that really do make it more likely that moms and dads raise their children together. Of course many children don't have that protection. Many single moms struggle heroically to raise kids on their own. Some kids have no parents and need adoption to get a loving home. Everyone knows the ideal doesn't always happen. Every child is a child of God, and every human being has a dignity we are called to respect.

But when we lose the ideal, the chances of making that dream come true for more children diminish, and the likelihood of deprivation, poverty and suffering for children dramatically increase.

Because marriage is not primarily a benefits-delivery package but a shared social norm, changes in the legal definition of marriage will affect all children, not just children in same-sex households.

Contrary to the assertion of the *Goodridge* majority, government does not create marriage. A social institution like marriage cannot be called into being merely by passing laws. It requires the combined resources of families, faith, communities, culture, history, law and society. However, in a large, complex society, laws defining marriage play an important role in sustaining the shared meaning of marriage.

The legal structure of marriage, and the unique status conferred on it by both law and society, conveys

*Maggie Gallagher is president of the Institute for Marriage and Public Policy (www.MarriageDebate.com) and co-author of *The Case for Marriage: Why Married People are Happier, Healthier, and Better Off Financially* (Doubleday, 2000).*

an absolutely critical message to the next generation: children need mothers and fathers, and marriage is the way you give to your children what they need.

What happens when we lose this common culture of marriage? When the law says fatherless or motherless families are just as good as married mothers and fathers?

What happens when law and government begins to teach the next generation that children don't need moms and dads?

When a marriage culture fails, taxpayers are asked to step in to fund the multitude of social needs created in communities where good enough marriages are not common. Cherished ideals of gender and social equality are threatened as more women face the social and economic disadvantages of single motherhood, and as some children, through no fault of their own are deprived of the profound social, spiritual, emotional, moral, and educational advantages of living with their own mother and father in a decent marriage. Children are put at risk: higher rates of poverty, welfare dependence, teen motherhood, juvenile delinquency, child abuse, sexual abuse, substance abuse, education failure, physical and mental illness.

A society deeply concerned about the suffering, inequality and social and taxpayer costs created by widespread fatherlessness would not consider at this time rewriting its marriage laws to advocate the idea that either parent is dispensable. There must be other better ways to address the legitimate needs of adults and children in alternative family forms.

The Constitution is not to be amended lightly, for passing political causes. Marriage is worth it.

2. Is Marriage Discriminatory?

No. Listen carefully to the implication of the arguments made by the *Goodridge* court and same-sex marriage advocate: there is nothing special about the unions of husbands and wives who can become mothers and fathers. Two men (or women) raising children together are just the same as a husband and a wife. To believe otherwise, courts and advocates are saying, is irrational bigotry. Laws defining marriage as the union of husband and wife are just like laws that used to ban interracial marriage.

Listen carefully because advocates of same-sex marriage are acknowledging: Same-sex marriage is not just about extending benefits to a small number of needy families. It is about transforming social as well as legal norms. The race analogy implies that people who believe that children need mothers and fathers are the legal and moral equivalents of racists. This idea and the people who believe it must be

driven from the public square if same-sex marriage are going to be regarded as fully equal to unions of husbands and wives. Licensing laws, public school curriculum, perhaps even tax exempt status of faith-based organizations will be used to advance this new vision of marriage, if we really believe that defining marriage as the union of husband and wife is invidious and arbitrary discrimination.

Do we? Sixty percent of African-Americans oppose same-sex marriage, as do 60 percent of white Americans, according to a November Pew poll. In the latest CBS News poll, 55 percent of Democrats support a constitutional amendment allowing only a man and a woman to marry. The vast majority of U.S. senators are on record favoring the federal definition of marriage as the union of a man and a woman. Are they all bigots?

Laws banning interracial marriage had nothing to do with the purposes of marriage. They were about keeping two different races separate so that one race could continue to oppress the other. Marriage, by contrast, is about bringing two different sexes together. It strains credulity to believe that marriage was created as a means of expressing animus towards gays and lesbians or any other group.

3. Is a Federal Amendment Necessary?

Yes. Marriage is a national issue because marriage is a key social institution. Without a common, national definition of marriage, our marriage culture will be fragmented as, as judges and public officials impose their own definition of marriage, often against the law and the direct expressed will of the people. A federal marriage amendment is the only way to sustain a common national definition of marriage, which is worthy of its status as a fundamental of civilization.

Same-sex activists themselves are ultimately calling for a national definition of marriage that includes gay marriage, only they seek to use the courts to create this over the will the American people. Why won't civil unions do? "Portability," is the answer most often given. If you are married in Massachusetts you can't be unmarried in South Carolina.

A Constitutional amendment is not a national crisis. Support for it is growing because Americans recognize this is the only way to take the issue off the table, to settle the question of the meaning of marriage in our nation once and for all, so we can move on to other things. The alternative is to let marriage become a political football fought out in thousands of jurisdictions large and small, legal and political, for the foreseeable future.